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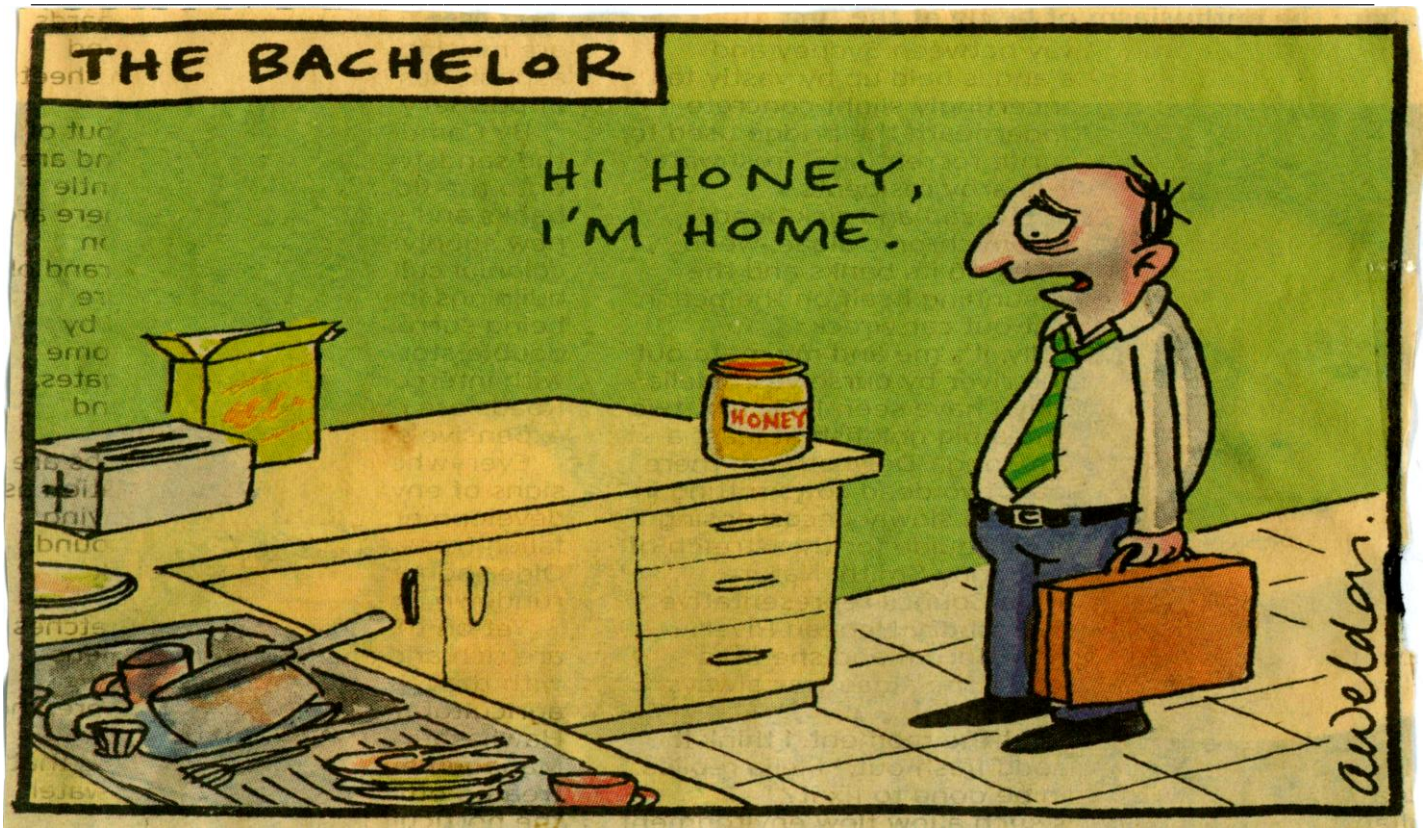

Observations On Growing Older

TODAY IS THE OLDEST YOU'VE EVER BEEN,
YET THE YOUNGEST YOU'LL EVER BE, SO ENJOY THIS DAY WHILE IT LASTS

~Your kids are becoming you...and you don't like them...but your grandchildren are perfect!

~Going out is good..Coming home is better!

~You forget names .... But it's OK because other people forgot they even knew you!

~You realize you're never going to be really good at anything .... especially Golf.

~The things you used to care to do, you no longer care to do, but you really do care that you don't care to do them anymore.

~You sleep better on a lounge chair with the TV blaring than in bed. It's called "pre-sleep".

~You miss the days when everything worked with just an "ON" and "OFF" Switch..

~You tend to use more four-letter words ..."what?"..."when?"... "where?"

~Now that you can afford expensive jewellery, it's not safe to wear it anywhere.

~You notice everything they sell in stores is "sleeveless"?!

~What used to be freckles are now liver spots..

~Everybody whispers.

~You have three sizes of clothes in your closet ....two of which you will never wear.

~But Old is good in some things: Old songs, Old movies, and best of all, OLD FRIENDS!!

~It's Not What You Gather, But What You Scatter That Tells What Kind Of Life You Have Lived! – and you did great!

~To the World, you may be one person; but to one person, you may be the World.

Fredrick Töben survives the Auschwitz homicidal gas chamber and escapes the spanking punishment of "50 blows with a stick on the loins administered with a machine manipulated by an SS".

...1997-Fredrick Töben climbed into the Zyklon-B gas-induction hole at Auschwitz-Birkenau Krema II...

... 1991-Sir Walter Crocker, 85, Fredrick Töben, 57, protesting against Adelaide war crimes trials...

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"Holocaust" Revisionism in 60 Seconds

... AND, the endless volumes of "testimony" about soap, lamp shades, and "death camps" in Germany which have been debunked without the public being made aware of the exposure of such large scale Jewish lying. Also there has been way too little coverage of the "Nazi" Spanking Machine.

Marie-Claude Vaillant-Couturier–1912-1996, was a communist minister in the French parliament. During WWII she was supposedly sent to Auschwitz. At the International Military Tribunal at Nuremberg she gave a lengthy testimony, which was full of lies – details.

One of the propaganda highlights of her testimony was: "One of the most usual punishments was 50 blows with a stick on the loins. They were administered with a machine which I saw, a swinging apparatus manipulated by an SS."

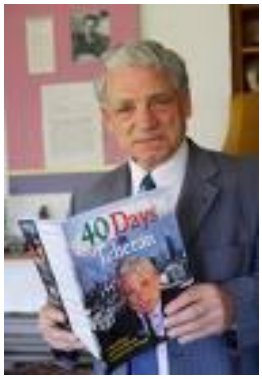
Justice Gray stated in his judgment of the 2000 Irving vs Lipstadt & Penguin trial:

"There is no reason to suppose that the IMT Nuremberg trial Judge Biddle had any reservations about Vaillant-Couturier's vivid, detailed and credible evidence about the womens' camp at Auschwitz." – source.

No case for Töben

November 1, 2012 by J-Wire Staff

A defamation case brought by Holocaust denier Fredrick Toben against community leader Jeremy Jones has been struck out in the Federal Court.



Fredrick Töben

Judge David Yates yesterday handed down his decision from the hearing heard in the Federal Court in Sydney on August 1. He ordered that the application and statement of claim be struck out and the proceeding be stayed permanently.

The judge ordered Adelaide-based Toben to pay Jeremy Jones's costs.

Toben had brought the case against Jones, who is a past president of The Executive Council of Australian Jewry on grounds that he had been defamed. The offending article was claimed to have stated that Toben is an anti-Semite who had said that the influence of the Talmud was pervasive.

In his judgment, Justice Yates said that the "commencement of this proceeding is an abuse of the Court's process".

Jeremy Jones

He found that the pleading of the statement of claim is deficient in a number of respects. He added: "Those deficiencies are not overcome by the amendments that the applicant has proposed. The originating application and statement of claim should be struck out."

A member of Jones's legal team told J-Wire: "Toben cannot start new proceedings against Jeremy Jones on the same grounds."

The article referred to appeared in the Australia/Israel Review in 2009. Earlier this year, Toben started proceedings in the Federal Court against Jeremy for defamation and for damages for alleged breached of the Competition and Consumer Act (the Trade Practices Act). Toben was declared bankrupt in September this year following his failure to pay costs on separate contempt proceedings.

http://www.jwire.com.au/news/no-case-for-toben/29314

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It took the judge three months to work out the appropriate sentence…and so the almost two decade battle has become a war that I, of necessity, must lose, so it seems.
If I hit back it's an abuse of process …… must be because my views are abhorrent, never mind defending the ideals of free expression and the search for truth!
The list is long – from 31 October 2012 back to 2000 and starting in 1996…
Fredrick Töben, Sydney, 2 November 2012.

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Federal Court of Australia Judgments against Töben

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1. **Toben v Jones [2012] FCA 1193 (31 October 2012)**
   (From Federal Court of Australia; 31 October 2012; 68 KB) LawCite
2. **Toben v Jones [2012] FCA 444 (3 May 2012)**
   (From Federal Court of Australia; 3 May 2012; 28 KB) LawCite
3. **Toben v Jones (No 3) [2011] FCA 767 (8 July 2011)**
   (From Federal Court of Australia; 8 July 2011; 28 KB) LawCite
4. **Toben v Jones [2009] FCAFC 104 (13 August 2009)**
   (From Federal Court of Australia - Full Court; 13 August 2009; 43 KB) LawCite
5. **Jones v Toben (No 2) [2009] FCA 477 (13 May 2009)**
   (From Federal Court of Australia; 13 May 2009; 63 KB) LawCite
6. **Toben v Jones (No 2) [2009] FCA 807 (30 July 2009)**
   (From Federal Court of Australia; 30 July 2009; 10 KB) LawCite

7. **T€ben v Jones [2009] FCA 585 (2 June 2009)**
   (From Federal Court of Australia; 2 June 2009; 21 KB) LawCite
8. **Jones v Toben (Corrigendum dated 20 April 2009) [2009] FCA 354 (16 April 2009)** (From Federal Court of Australia; 16 April 2009; 253 KB) LawCite
9. **Toben v Jones [2003] FCAFC 137 (27 June 2003)**
   (From Federal Court of Australia - Full Court; 27 June 2003; 186 KB) LawCite
10. **Jones v Toben (includes explanatory memorandum) [2002] FCA 1150 (17 September 2002)**
    (From Federal Court of Australia; 17 September 2002; 122 KB) LawCite
11. **Toben v Jones [2002] FCAFC 158 (21 May 2002)** [100%]
    (From Federal Court of Australia - Full Court; 21 May 2002; 16 KB) LawCite
12. **Jones v Toben [2000] HREOCA 39 (5 October 2000)**
    (From Human Rights and Equal Opportunity Commission; 5 October 2000; 91 KB) LawCite

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Comment by Amelia Aremia – An American viewpoint
2 November 2012

History shows a few who became famous because of their traits and accomplishments based on truth and historical facts in every important era. The solutions to life's problems, including governments, can be more simple than the complex challenges that Congress portrays---including fair justice. Political wisdom in public affairs is lacking, because, unlike our Founding Fathers who were God-fearing men, we no longer have lawful justice but Judicial Indiscretion which today leaves a dark mark upon our daily lives.

The defeat of good, the success of evil has been replaced by fear which has been instilled into a Godless society destroying the greatest civilization that was based on Christianity-- His Commandments and Laws. We are left with the dreary hopeless irreligion replacing God in the world, as Christianity is being shut out by those who cannot see, or refuse to consider the evilness we suffer as our great civilization is being replaced with the corruption of greedy, self-seeking, cowardly manipulators of the law they mask under the guise of "humanism." The truth will elude the world as long as the people refuse in blindness and ignorance, or courage to face the truth.

In the National Catholic Register for July 4, 1976, there is a three column heading on page two(2) which reads: "Synagogue Council Lauds Bishops On Jewish-Christian Relations."

When the Synagogue Council lauds an organization for its relations with the Jews, the only logical question to ask, in view of past "Jewish' History is: What extraordinary service did that organization perform to please the Council; or if it be the teaching voice of the Church, what treason did it commit? Zionism/Communism made its greatest strides after Vatican II; the Catholic Church was warned that Vatican II was called for the express purpose of absolving the Jews for the death of Christ.

If the Jews were not responsible for the death of Christ, then who was? Pontius Pilate? That would be too fraudulent an answer because the mob had a choice between a convicted killer and the innocent Jesus, The other possible answer is "society." Mobs, depending on what favorable or adverse conditions have been imposed on them, can be swayed by suave orators to deeds of heroism or to acts of murder as was the case with Jesus when the Pharisees realized His Kingdom wa not to be the restoration of Israel. We again see the same action happening in the Middle East, creating unrest, chaos, and killing.

Church history points out that the savage persecutions of the Christians by the Romans did not begin until Jewish influence was brought to bear on the Romans. The Bible is filled with accounts of Jewish persecution of Christians, For 2000 years they have been vilifying Jesus and Christianity,

It is the Jews who originated biblical exegesis; just as they were the first to criticize the forms and doctrines of Christianity. Truly has Darmeteter written: "The Jew was the apostle of unbelief, and every revolt of mind originated with him." – Bernard Lazare: *Antisemitism: Its History and Causes,* Britons Publishing Co. London, 1967.

No Christian, or other public affairs groups took Menacheim Begin to court when he made a speech in the Knesset, and published in the *The New Statesman* --June 25, 1982 when he said: "Our race is the master race. We are divine gods on the earth. We are different from the inferior races as they are from insects---other races compare to us as human excrement."

These groups have allowed opposition groups to bring unchecked pressure on lawmakers in the legislative, executive and judicial branches of our government. The 5-6 million American Jews have, through their interest groups, a greater influence in shaping policies in religious, moral and educational matters than 50million or more Catholics and millions of other Christian religion groups, Father Virgil C. Blum, Jesuit,

said to the 7th annual seminar of the Department of Health Affairs of the Ohio catholic Conference.

I am not " anti-Semitic" many "Jews" are not ethnic Jews, but rather descendents of a non-Semitic people called Khazars.

Hitler is endlessly denounced for a crime he purposely did not commit; yet rarely is a peep said about the slaughter of 40 million Christians by Stalin, or the 80 million Christians slaughtered by Mao Tse-tung of China.

Amnesty International: Imperialist Tool

By Francis A. Boyle

Global Research, October 24, 2012

Dear Amnesty Friends:

I am in receipt of the response by three members of the AIUSA Middle East Coordination Group to my message that was entitled "NGOs As Western Tools." You will note that they never denied any of the basic facts set forth in my original message. When Israel invaded Lebanon in 1982 and murdered 20,000 Arabs/Muslims with the full support of the United States, both Amnesty International and AIUSA said absolutely nothing at all despite vigorous efforts by AIUSA Members to get them both to say and to do anything.

When it became clear that AIUSA was not going to say or do anything about Israel's wholesale slaughter of Arabs/Muslims in Lebanon because of the marked pro-Israel bias by the AIUSA Staff, Board, and Funders, I called the Irish Nobel Peace Prize Winner Sean MacBride at his home in Dublin and asked him to intervene with AI/London. What little AI/London said and did about 20,000 Arabs/Muslims in Lebanon murdered by Israel with the full support of the United States was due to Sean MacBride.

MacBride then convinced the then AI Secretary General to appoint me a Consultant to Amnesty International on the human rights situation in the Middle East. In that capacity, I attended the founding meeting of what would become the AIUSA Middle East Coordination Group. In other words, I was one of the founders of the AIUSA Mid-East Co-Group, some of whose members are now defending its work. At that founding meeting I said quite emphatically that Amnesty International and AIUSA would have absolutely no credibility whatsoever in the Middle East unless they dealt forthrightly and vigorously with violations of the human rights of Arabs and Muslims by Israel, and, in particular, Israeli atrocities against the People of Lebanon and the Palestinian People. Soon thereafter, I found out that the Members of the AIUSA Mid-East Co-Group had been instructed to have nothing more to do with me by a direct order coming from the AIUSA Board of Directors.

It is fair to say that Amnesty International has quite recently released some reports dealing with Israeli violations of human rights of the Palestinian People and the Lebanese People. But Israel has been consistently murdering, torturing and destroying the Palestinian People since at least the time when the occupation of their lands began in 1967–and with the full support of the United States Government. And only now has Amnesty International got around to condemning it. Almost a decade ago while on the AIUSA Board, I tried to get AI/London and AIUSA to act on the basis of the infamous Landau Report whereby the Israeli Government officially sanctioned torture against Palestinians. Over a decade ago while on the AIUSA Board, I pointed out that this made Israel the only state in the world to officially sanction torture. It is nice to see that a decade later Amnesty International has finally agreed with me and said something about it.

Likewise, Israel has been rampaging around Lebanon with the full support of the United States to the grave detriment of the Lebanese People and Palestinians living there since at least the time when Israel first invaded Lebanon in 1978. The primary reason why Amnesty International has put out these latest reports condemning Israeli human rights violations in Lebanon and against the Palestinian People after decades of silence is because there are now several other human rights organizations which have acted against Israel when AI/London and AIUSA refused to act because of their marked pro-Israel bias. When it comes to protecting the human rights of Palestinians, Lebanese, Arabs/Muslims from atrocities by Israel, the United States, and Britain, AI/London and AIUSA have always been too little, too late, and on purpose.

While on the AIUSA Board I once saw the itinerary drawn up by AIUSA for the visit to the United States by the then AI Secretary General coming from London. On the list was almost every major pro-Israel group in New York and Washington and about one Arab Group. Given their standard operating procedures, I am confident the pro-Israel groups threatened the AI Secretary General that they would have their members withhold or reduce their contributions to AI and AIUSA if AI/London did not reign in its pathetic, pitiful, and meager criticisms of Israel. While I was on the AIUSA Board, AIUSA paid about 20% of the budget for AI/London. He who pays the piper calls the tune.

You will also note that the three AIUSA Mid-East Co-Group members' response to my original message said absolutely nothing at all about the scandalous Kuwaiti Dead Babies Report and Campaign that both Amnesty International and AIUSA used for the purpose of promoting war against Iraq. As a Member of the AIUSA Board, I received a pre-publication copy of the Dead Babies Report. I read it immediately and quite carefully. First, this report contained technical errors that should

have precluded its publication. Second, even if all these sensational allegations had been true, it was clear that publication of this report at that critical moment in time (December 1990) would only be used by the United States and Britain to monger for war against Iraq. I expressed these opinions in the strongest terms possible and that this report should not be published because it was inaccurate; or that if for some reason it were to be published, it must be accompanied by an errata sheet. Amnesty International published the Dead Babies Report anyway despite my vigorous objections, and launched their Disinformation Campaign against Iraq. From this episode I could only conclude that AI/London deliberately intended the Dead-Babies Report and Campaign to be used in order to tip the balance in favor of war against Iraq.

This is exactly what happened. In January of 1991 the United States Senate voted in favor of war against Iraq by only five or six votes. Several Senators publicly stated that the AI/AIUSA Dead Babies Report and Campaign had influenced their votes in favor of war against Iraq. That genocidal war waged by the United States, the United Kingdom and France, inter alia, during the months of January and February 1991, killed at a minimum 200,000 Iraqis, half of whom were civilians. Amnesty International shall always have the blood of the Iraqi People on its hands!

Once it became clear that there never were any dead babies in Kuwait as alleged by Amnesty International, AI/London proceeded to engage in a massive coverup of the truth. For all I know, the same people at AI/London who waged this Dead-Babies Disinformation Campaign against Iraq are still at AI/London producing more disinformation against Arab/Muslim states in the Middle East in order to further the political and economic interests of the United States, Britain, and Israel. Because of its Dead-Babies Disinformation Campaign against Iraq and its ensuing coverup, Amnesty International will never have any credibility in the Middle East!

During the past eight years, about 1.5 million People in Iraq have died as a result of genocidal sanctions imposed upon them primarily at the behest of the United States and Britain, including in that number about 500,000 dead Iraqi children. While on the AIUSA Board of Directors, I tried to get them and AI/London to do something about this genocidal embargo against the People of Iraq, and especially against the Iraqi Children. Both AI/London and AIUSA adamantly refused to act despite the grievous harm that their Dead-Babies Disinformation Campaign had inflicted upon the People of Iraq. It was clear to me at the time that there was no way AI/London and AIUSA were going to take on Britain and the United States on behalf of the completely innocent People of Iraq.

Now we are told that there is something in the AI Mandate that precludes AI action against such genocidal economic embargoes. Of course this is nonsense. While I served on the AIUSA Board, one of our Board Chairs personally put me in charge of handling Mandate issues for the AIUSA Board. I know all about the Mandate. It was my responsibility.

Generally put, when AI/London and AIUSA want to take action on a matter because it will bring them publicity, money, members, and "influence," they pay no attention whatsoever to their so-called Mandate. Likewise, when AI/London and AIUSA decide for political or economic reasons that they will not work on human rights problem, they trot out their so-called Mandate to justify non-action.

The same type of bogus argument was used by AI/London and AIUSA to prevent the organizations and their memberships from taking any effective action against the criminal apartheid regime in South Africa that had been oppressing millions of Black People for decades. To the best of my knowledge, Amnesty International is the only human rights organization in the entire world to have refused to condemn apartheid and work against it. The spurious argument made here was that Amnesty International could take no position on a type of government. But the truth of the matter was that Amnesty International is headquartered in London, and AIUSA is headquartered in New York and Washington. The biggest political supporters of the criminal apartheid regime in South Africa were the governments of Britain, the United States, and Israel. Likewise, the biggest sources of economic investments in the criminal apartheid regime in South Africa came from Britain and the United States. Once again, he who pays the piper calls the tune.

There was no way AI/London and AIUSA were ever going to work against the political and economic interests of Britain, the United States, and Israel operating together in support of the criminal apartheid regime in South Africa. So AI/London and AIUSA concocted this spurious rationale for non-action. The same is being done today by AI/London and AIUSA to justify their non-action in light of the genocidal economic embargo imposed now primarily by the United States and Britain against the People of Iraq. There is no way AI/London and AIUSA will ever act against the political and economic interests of the United States, Britain, and Israel in the Middle East, and certainly not on behalf of the People of Iraq, whose blood AI and AIUSA now have on their hands.

Notice too how this latest specious justification for AI non-action fits in quite neatly with the strategic objectives of the United States around the world. Right now the United States Government is primarily responsible for imposing genocidal economic sanctions against the People of Iraq, the People of Cuba, and the People of North Korea. Amnesty International will do nothing at all about it. In other words, by their deliberate non-action AI and AIUSA are supporting the

genocidal policies of the United States, Britain and Israel against these Third World countries–just as AI and AIUSA supported the criminal apartheid regime in South Africa by their deliberate non-action. If you want to do effective human rights work in opposition to the imperial, colonial and genocidal policies of the United States, Britain, or Israel, there is no point working with Amnesty International or AIUSA. You will simply be wasting your time, your efforts, your resources, and your enthusiasm.

Permit me to further substantiate this assertion that Amnesty International and AIUSA are imperialist tools by reference to other areas of the world. It is well known that AI/London has done little effective work to help Irish Catholics in Northern Ireland. As Sean MacBride once said: Amnesty International will never treat Irish Catholics fairly so long as it is headquartered in London. The long and sordid history of AI/London non-action in the face of genocidal violations of the most fundamental human rights of Irish Catholics living in Northern Ireland by Britain is well known among Irish Americans and Irish People living in Ireland, Northern Ireland, and around the world. For example, a letter by a former AI Secretary-General sabotaged public support for the defense of Joe Doherty here in the United States. Just recently, it required a massive internet campaign to force AI/London to do anything at all to save the life of Loinnir McAliskey and to obtain the freedom of Roisin McAliskey.

Let me now move from the British colony in Northern Ireland to the American colony in Puerto Rico. While I was still on the AIUSA Board, a fellow Board Member asked me to draft a resolution for adoption by the Annual General Meeting (AGM) of AIUSA calling for a comprehensive AI Campaign against human rights violations by the United States in Puerto Rico. This resolution passed the AIUSA/AGM overwhelmingly, and without any dissent that I could detect. I was then invited by Amnesty International/Puerto Rico to give the Keynote Address at their Annual General Meeting in San Juan on the subject of the right of Puerto Rican political prisoners in American jails to be treated as prisoners of war. Immediately thereafter, AI/London and AIUSA applied massive pressure on AI/Puerto Rico to prevent this speech. AI/Puerto Rico refused to cave in.

I went down to Puerto Rico to attend their AGM, gave the Keynote Address, and also investigated U.S. human rights violations in Puerto Rico, including torture, summary executions and disappearances. Upon my return home, AIUSA attempted to stiff me out of my expenses despite the fact that I was attending the AI/Puerto Rico AGM in my official capacity as an invited AIUSA Board Member. Perhaps I missed it due to the press of other duties at the time, but I am not aware of any comprehensive Amnesty International Campaign against U.S. human rights abuses in Puerto Rico as overwhelmingly called for by the AIUSA/AGM.

Finally, let me say a few words about the deliberate non-action of AI/London and AIUSA on behalf of indigenous peoples living in the United States and its imperial ally, Canada. Back when I was on the AIUSA Board, AI/London decided to launch an international campaign on behalf of indigenous peoples. As usual, I received a pre-publication copy of the campaign material. On reading it, I immediately noticed that almost nothing was to be done to help the indigenous peoples living in the United States and Canada. I protested this to AI/London and AIUSA, and demanded that the indigenous peoples living in the United States and Canada be added as an integral part of this campaign. To the best of my knowledge, this was never done. I leave it to the indigenous peoples living in the United States and Canada to decide for themselves how helpful AI/London and AIUSA have been to them.

I will not belabor the obvious any longer in this brief Memorandum. But based upon my over sixteen years of experience having dealt with AI/London and AIUSA at the highest levels, it is clear to me that both organizations manifest a consistent pattern and practice of following the lines of the foreign policies of the United States, Britain, and Israel. You can certainly see this in all of AI's non-work with respect to the Middle East, Northern Ireland, Puerto Rico, South Africa, indigenous peoples living in North America, etc. Effectively, Amnesty International and AIUSA function as tools for the imperialist, colonial and genocidal policies of the United States, Britain, and Israel.

There are many people of good will and good faith working at the grassroots level of Amnesty International and AIUSA who genuinely believe that they are doing meaningful and effective work to protect human rights around the world. But at the top of these two organizations you will find a self-perpetuating clique of co-opted Elites who deliberately shape and direct the work of AI and AIUSA so as to either affirmatively support, or else not seriously undercut, the imperial, colonial, and genocidal policies of the United States, Britain, and Israel. The Leadership Elites of AI/London and AIUSA have always considered themselves to be the so-called "loyal opposition" to the imperial, colonial, and genocidal policies of the United States, Britain and Israel. I would ask the people at the grassroots of AI and AIUSA whether you want to continue being part of the "loyal opposition" to imperialism, colonialism and genocide perpetrated by the United States, Britain and Israel? It is not for me to tell those people of good faith and good will currently working with AI/London and AIUSA what to do. But I have found other organizations to work with and support.

http://www.globalresearch.ca/amnestyinternational-imperialist-tool/5309437

PAGE 2 Monday August 2 1999 THE MAIL-TIMES

Amnesty turns back on Toben

AMNESTY International has decided against adopting former Wimmera free-speech advocate and Adelaide Institute director Dr Fredrick Toben as a prisoner of conscience.

Australian Council of Civil Liberties president and Melbourne barrister John Bennett, who is in Germany to help defend Dr Toben on charges of defaming the memory of the dead, received notification of Amnesty's decision last week.

Dr Toben has been in a Mannheim prison since April. He is due to be tried next month.

"In 1995 Amnesty decided it would exclude from prisoner of conscience status not only people who have used or advocated violence but also people who are imprisoned 'for having advocated national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'," the letter from Amnesty reads.

"The decision codified Amnesty's intention to exclude from prisoner of conscience status those who advocate the denial of the Holocaust.

"Amnesty International seeks to promote the world-wide observance of all human rights as enshrined in the Universal Declaration of Human Rights and as such the organisation does not support any group or person engaging in activities aimed at diminishing the rights and freedoms of others."

Adelaide Institute acting director Geoff Muirden said the letter implied Dr Toben supported the idea of incitement to violence, which he never had. The letter had also cited Toben's comments on the search for historical truth as if this was somehow morally reprehensible.

"The tone of this statement echoes the second arrest warrant against Dr Toben, which attributed malicious motives to him," Mr Muirden said.

"It is so hypocritical. It implies Dr Toben was engaged in activities aimed at diminishing the rights and freedoms of others while refusing to recognise that the persecution of revisionists constitutes exactly that."

Mr Muirden said Amnesty International was 'very selective' in its advocacy of prisoners' rights.

AMNESTY INTERNATIONAL
AMNISTÍA INTERNACIONAL
AMNISTIE INTERNATIONALE
МЕЖДУНАРОДНАЯ АМНИСТИЯ
منظمة العفو الدولية
國際特赦組織

Ref.: EUR/MP

Mr Geoff Muirden
Acting Director
Adelaide Institute
Po Box 3300
Norwood 5067
Australia

20 July 1999

Dear Mr Muirden,

I thank you for your fax of 10 July 1999 regarding Dr Gerald Fredrick Toben. As you are aware Dr Gerald Fredrick Toben is the director of an association in Australia called the Adelaide Institute which propagates its views via the Internet. The main focus of the Adelaide Institute is the Holocaust. Through its website the Adelaide Institute purports to refute the historical accuracy of estimates that put the number of Jews who died in Nazi concentration camps at six million. The following excerpt from the homepage of the Adelaide Institute exemplifies its position of this issue:

"*We are a group of individuals who are looking at the Jewish-Nazi Holocaust, in particular we are investigating the allegation that Germans systematically killed six million Jews, four million alone at the Auschwitz concentration camp .... In the meantime we have noted the original four million Auschwitz death figure has been reduced by Jean Claude Pressac to a maximum of 800,000. This in itself is good news because it means that around 3.2 million people never died at Auschwitz - a cause for celebration*".

I regret to inform you that Amnesty International will not be adopting him as a prisoner of conscience. Amnesty International defines prisoners of conscience as people detained for their political, religious or other conscientiously held beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status - who have not used or advocated violence. With respect to this definition, in 1995 the organization decided at a meeting of its International Council - the highest decision-making body of Amnesty International - that it would exclude from prisoner of conscience status not only people who have used or advocated violence, but also people who are imprisoned "for having advocated national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". The decision codified Amnesty International's intention to exclude from prisoner of conscience status those who advocate the denial of the Holocaust and it confirmed what had in fact been the *de facto* interpretation of the prisoner of conscience definition contained in Article 1 of Amnesty International's Statute.

There is compelling evidence that Dr Gerald Fredrick Toben through the Adelaide Institute's web site has been advocating, at times euphemistically, at times crudely, that the Holocaust is a myth. As a result, Amnesty International regards his activities as characterized by a clear intent to publicly advocate the denial of the Holocaust. For example, on the first day of

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1 Easton Street, London WC1X 8DJ, United Kingdom
Tel: Int. Code: (44) (171) 413 5500. UK Code: (0171) 413 5500. Fax: Int. Code: (44) (171) 956 1157. UK Code: (0171) 956 1157.
E-Mail: amnestyis@amnesty.org Web: http://www.amnesty.org
Telegrams: Amnesty London WC1

the tour, commenting on the ban of the British revisionist David Irving from entering Australia, Dr Gerald Fredrick Toben wrote in his travel log: "What was Irving's crime? He merely told a German audience that the alleged gas chamber shown to tourists at Auschwitz is a fraud - which is true. So, truth-telling is a criminal offence in Germany!". In another instance, a media release from 12 April 1999 commenting on Toben's European tour and subsequent arrest stated that "Dr Toben has shown great moral courage in challenging the official Holocaust dogma....". On the Adelaide Institute's homepage a number of similar statements can be found. The posting of material on a Web site which can be viewed by millions of individuals is as much an act of advocacy as is handing out leaflets, circulating a petition or publishing a book.

In making its decision to exclude certain individuals from the prisoner of conscience status in 1995 the International Council further decided that Amnesty International should abide by international standards and in particular article 20 (2) of the International Covenant on Civil and Political Rights which states "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law".

Amnesty International seeks to promote the world-wide observance of all human rights as enshrined in the Universal Declaration of Human Rights and as such the organization does not support any group or person engaging in activities aimed at diminishing the rights and freedoms of others. The decision of Amnesty International not to adopt Dr Gerald Fredrick Toben as a prisoner of conscience is consistent with, and inherently derives, from this position.

I hope I have clarified the position of Amnesty International to Dr Gerald Fredrick Toben and our reasons for not adopting him as a prisoner of conscience.

Yours sincerely

Matthew Pringle
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Peddling spin and paddling furiously

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Illustration: Eric Lobbecke *Source:* The Australian

IF Tony Abbott is a sitting duck, then Julia Gillard is a mallard in a feeding frenzy, legs aloft, head down, foraging and burrowing around the bottom of a wide and shallow pond.

There is nothing subtle about this image. There is no vision of easy elegance, a graceful glide across the surface with the furious paddling hidden below the water line. The frenetic activity is above the surface, fully exposed for all to see. A mini-budget here, a Murray-Darling water plan there. If you don't fancy those, perhaps a blockbuster Asian Century white paper will do, and for something really sneaky, redraw the map and leave a white space where Australia normally resides. Make sure there are enough positives in the back pocket to smother a negative, and if an issue needs killing off or the questions are too difficult, drop it late on a Friday - as the Treasurer did with the sale of Cubby Station to the Chinese - and, fingers crossed, by the time of the next scheduled appearance the story will have moved on to something else or skewered the opposition. Which is precisely what happened.

The government's frankenstorm of activity, its big-headline strategy, dropping good news when the pollsters are in the field, burying bad news on the off days, is designed to leave the opposition struggling to catch up, smother the critics, divert the media and leave the public with an impression of serious activity from a serious government focused on the important issues.

One project is designed to distract from the other, to bury Maxine McKew, Kevin Rudd and Craig Thomson in an avalanche of new news as opposed to old news, to discredit them when necessary, mess with Abbott's head, unbalance and wedge the opposition wherever possible.

If any troubling questions do arise, whether about her bloodied hands or the smelly separation from her law firm, the Prime Minister testily dismisses them, using her catch-all response that she has dealt with it all before, when in reality she hasn't. And the media hounds go along, preferring to play with the new rubber bone she has tossed them than gnaw at the old one.

The announcements vary in quality and depth, are not always deftly executed, often include start and completion dates too far away to matter or for anyone now serving to be held accountable, and usually there's not even a sniff of dollars to fund them. Principles are abandoned, promises are broken, integrity is compromised.

The hope is that by the time the serious analysis exposes the deficiencies and inconsistencies of the policies announced, the agenda has shifted elsewhere or the Prime Minister is waving goodbye again from the steps of her VIP aircraft.

So far, the strategy of the Scots Guard and the praetorians to preserve the empress and stabilise Labor's vote has worked a treat.

There is still a way to go. The reason the government has to keep everything moving so quickly was amply demonstrated last month with the release of the mid-year economic and fiscal outlook, ahead of time and out of budget.

Its fraudulence was laid bare when The Australian reported last Thursday that the mining tax, forecast by the Treasurer, Wayne Swan to raise $2 billion over the year, had not raised a single cent in the first quarter.

A tax without revenue is like a treasurer with no trousers. It is both hugely embarrassing and incredibly careless. To pinch an old trouser joke, it would be funny if it wasn't so serious.

This uncomfortable exposure was preceded by a report in The Sydney Morning Herald that the government was prepared to jettison its surplus objective rather than make deeper cuts that risked hurting the economy or the vulnerable. Correspondent Phil Coorey wrote it after receiving a cryptic phone call pointing him to a section in the MYEFO on which he based his story and which he quoted: "The government will continue to balance these considerations, particularly if there is any further deterioration in economic conditions or in tax receipts. (It) will continue to ensure its approach to savings is appropriate for the economic conditions and is fair on the community."

Nobody from the government quibbled with Coorey's story or bothered to deny it.

The opposition finally got around to asking Swan and Gillard about it in parliament and, as befits the Asian Century, we got a version of Chinese whispers, with the government effectively confirming the promise was junked while also insisting it remained committed to the objective.

Gillard and Swan have retreated from what was once a rock-solid, come hell or high water guarantee, confident they will pay little or no penalty because most economists and commentators will forgive them, business thinks it doesn't matter, and the public never believed it would happen anyway.

Before anyone could dwell too long on the shortcomings of its economic management as revealed by MYEFO, Gillard sped to

South Australia to announce another iteration of the Murray-Darling Basin plan (yet another John Howard initiative). It came with a five-year delay in the time frame, and full environmental benefits not expected until 2024, a year earlier than many of the goals laid out in the Asia Century white paper, and ulterior motive to split the Coalition along state lines so Labor can finish the parliamentary year on a high.

If the Murray-Darling plan does not divide the Coalition - and Simon Birmingham and Barnaby Joyce have been delegated to ensure it doesn't - then wheat deregulation or excising Australia from the migration zone might.

At least moderate Liberals Russell Broadbent and Judi Moylan will stick to their principles and vote against the excision, leaving Labor to do its best to out-Howard Howard.

It is impossible for the Coalition, or anyone else, to argue against the white paper. It would be like condemning motherhood. However, the sentiments it expresses are almost as old as support for motherhood itself.

Tony Eggleton recalled on Tuesday that when Harold Holt became prime minister in January 1966, the year Gillard arrived here from Wales, he declared Australia needed to recognise it was an integral part of Asia and the Pacific.

Holt travelled widely in the region, and Eggleton revealed that in his last conversation with Holt, on the day before he drowned, Holt said he wanted to visit the key European capitals to emphasise to leaders there the importance of our region.

Holt told Eggleton the problem was that Europeans did not recognise that Asia would become the "global powerhouse" of the future. Holt never got the chance to realise his vision.

The beauty of the Asia white paper is the opportunity it provides Gillard to link all her policies to her discovery of the region, use it to prop up any floundering policies, including the National Broadband Network, and justify the junking of the surplus to begin funding it.

Her task is to match up her record and her rhetoric and to live up to the headlines.

http://www.theaustralian.com.au/opinion/columnists/peddling-spin-and-paddling-furiously/story-fnahw9xv-1226507837620

ABC Radio National **Law Report**

MEDIA FREEDOM AT CENTRE OF PRIVACY RETHINK –

PRESENTED BY DAMIEN CARRICK, TUESDAY 30 OCTOBER 2012 5:30PM

We are currently awaiting an announcement on whether Australia will introduce a statutory right to privacy.

At the same time, the role and ethics of media outlets in Australia and the UK are being thoroughly examined. The Leveson Inquiry is investigating the gross invasions of privacy by UK tabloid *The News of the World*, and Australia's Finkelstein Inquiry and Convergence Review are assessing this country's journalistic standards.

With the interaction of media activity and the private lives of citizens in mind, does privacy have any relevance in the 21st century?

Host Damien Carrick recently spent some time at the Reuters Institute for the Study of Journalism at Oxford University researching these very issues. His report has just been published. You can find it here – http://reutersinstitute.politics.ox.ac.uk/about/news/item/article/privacy-regulation-and-the-public.html

Damien Carrick: Hello, welcome to the *Law Report*, Damien Carrick with you. Currently both Australia and the UK are engaged in a fundamental re-examination of how we regulate the media. The UK is awaiting the release of the much-anticipated findings of Lord Justice Leveson's inquiry into the *News of the World* phone hacking scandal. Here in Australia we're awaiting on Canberra's response to two recent inquiries or reviews. We've got the Finkelstein Inquiry, it's calling for statutory regulation of all sectors of the media, including, for the first time, newspapers. There's also the Convergence Review; it recommended an industry-led body to overseas journalistic standards of news and commentary across all media platforms. But what I want to concentrate on today is another big potential change to the Australian media landscape.

In September 2011, the federal government released a discussion paper titled 'A Statutory Cause of Action for Serious Invasion of Privacy'. It received a large number of submissions, and we're currently waiting on the announcement from Canberra over whether or not it will press ahead, and for the first time in Australia create a statutory right to privacy. Well, today a conversation with two leading media law experts about privacy. Peter Bartlett is a partner with Minter Ellison. He's one of Australia's leading media lawyers. He provides round-the-clock advice to *The Age* newspaper. Michael Rivette is a barrister who has a great deal of experience in media and privacy law. First, a broad question to Michael: in the 21st century does the concept of privacy have any relevance?

Michael Rivette: Of course it does. Fundamentally, the issues of privacy, to me at least, and actually as the foundation of where privacy comes from, is that it's a human right; it's a right of human autonomy, the right that an individual has to keep certain things about them private. Now, I know if you look at this on a personal basis there are things about my life that I certainly wish to keep to myself, and that the law currently says I have a right to keep to myself.

Damien Carrick: Peter Bartlett?

Peter Bartlett: There is clearly a right to privacy, but we do not need a new regime. We presently have a vast number of laws that protect privacy in the telecommunications area, the surveillance area, protection of children, the Family Court area, protection of victims of sexual assault and so many other areas; there is already protection there. You also look, I think,

at the complaints to the communications and media authority, and to the Australian Press Council. There are very, very few complaints in relation to privacy. We are not in a situation where we need statutory intervention.

Damien Carrick: Well, let's talk about what the current state of the law is. You talked about some of the protections in legislation, but there are of course, to some extent, protections that can be sought through our courts. Those protections differ from country to country. I'd like to talk first about the UK, where the law has developed far more broadly and has gone a long way further down the road than here.

Michael Rivette: Well, it's a moving feast, to be quite honest, but can I just stop, before I answer that, there's something that I'd like to comment in, just in relation to what Peter just said. When we talk about privacy issues, what we tend to talk about is a polarisation between an individual's right of privacy and the right of media, and when we define the whole argument in media terms, then what we're really doing is we're only dealing with the issue of privacy in a very narrow slice, because privacy is not an issue that solely deals with media and media intrusion, and in fact the great intrusion into individual privacy doesn't happen in media that's regulated at all. It's happening on the social media; it's happening in 21st century forms of communication. And so to polarise this whole debate as being a debate that's solely the issue of the balance, as we say, the right of freedom of expression, with the right of privacy, I think does the whole debate an injustice, to be quite honest. But clearly what actually occurs…the reality of the situationin the absence of some statutory cause of action, the reality is that most of the leaps that occur through the common law, if we're talking about the development of the common law, occur in a media setting, and indeed, to come back to your question, that's actually what occurred and has occurred in England: the great leaps have arisen from that...from that situation.

Where we start in England is, we start with the European Convention of Human Rights. England is part of that convention, signed up to a code that the English courts had to adopt. It didn't say what mechanism had to be used, but it certainly had to protect, under Article 8, the right of privacy, and that had to be balanced with the freedom of expression under Article 10. Now, although we don't have a convention—that convention—we do have an international convention that Australia is a signatory to, and under Article 17 we have a right of privacy, so the same sort of balance has to occur. It hasn't yet occurred through the courts, that balance, but that's the next stage of the whole debate.

Damien Carrick: So that context, the European Convention on Human Rights, is the rubric through which privacy cases have gone through the courts. There have been some very, very interesting ones; notably the Max Mosley *News of the World* case a few years ago. I think they filmed him engaged in a consensual sadomasochistic sex orgy with several hookers, and the courts ordered him something like £60,000 and an injunction. But then there have been other cases in recent times; I think there was a footballer, Rio Ferdinand, and the courts have been moving a bit away, more towards protection of freedom of expression as opposed to protection of privacy. In very brief terms, what was that case about?

Michael Rivette: It's quite a controversial case, actually, because Ferdinand was involved in a relationship—extramarital affair. He had previously had a history, but the impression had been created that he was somehow reformed, and what the court said was, 'Well, given his position, as captain, it was of public interest that they know this, because of the image that he had allowed to be projected that he had been actually reformed.'

Damien Carrick: And indeed I think a previous captain had lost his job for a similar reason.

Michael Rivette: Exactly, so that was all factored in. So you could see a decided shift from the Mosley case back towards the balance of the freedom of expression.

Damien Carrick: Here's the lawyer for the newspaper, outside the London court, immediately following the Rio Ferdinand decision.

Lawyer: I think it is unusual for newspapers to win privacy cases; the trend has certainly been against...in favour of privacy claimants and against defendants, but I don't think we won because the judge correctly carried out the balance. He looked at Rio Ferdinand, he looked at Rio Ferdinand, what he'd done, and he also looked at comments that had been made by the Football Association, and the England manager about the position of the England captain, and took all that into consideration.

Damien Carrick: So there's this pendulum which is swinging back and forwards, but of course in the UK a few years ago there was enormous concern about the use of injunctions by public figures to prevent newspapers from publishing details such as the extramarital affairs of footballers. I mean, we had the Ryan Giggs case, Peter Bartlett, which was extraordinary, and picking up on what Michael Rivette says about social media, that was immensely important in that case.

Peter Bartlett: Well, it was important in that case, but I think that case points out that parliament should not pass statutes that they can't enforce. Courts shouldn't pass or make judgments that they can't enforce.

Damien Carrick: What happened was, was that there was an injunction preventing the publication of details about Ryan Giggs' extramarital affair, but then there were 75,000 tweets across the blogosphere or the twittersphere, and then it became so ridiculous that a member of one of the houses of parliament in the UK named Giggs in parliament.

Peter Bartlett: If the mainstream media had breached that injunction, the court could've taken contempt proceedings, but the court cannot take contempt proceedings against 75,000 tweeters, especially where a lot of those people could not be identified and were probably out of the jurisdiction.

Damien Carrick: It goes to the reality of the exchange of information in the 21st century.

Peter Bartlett: It's very true, very true, and it does point out that there is a significant limit on the power of the courts to enforce their judgments with social media, and the same goes for any statutory privacy law.

Damien Carrick: In more recent times there has been enormous concern about phone hacking and the scandal at the *News of the World*. We had of course the terrible case of Milly Dowler, a murdered teenager and her mobile telephone was hacked into by *News of the World* journalists. How does the terrible phone hacking scandal feed into this conversation?

Peter Bartlett: I was in London the week that that broke—the end of that week, when the last edition of *News of the World* out—and I had a meeting that week with Lord Justice Leveson, and it was one of the most extraordinary and depressing weeks, I think, in the history of the media. But it's important to point out that what happens in the UK, and what Lord Justice Leveson is looking at, is a million miles from what happens in Australia. I've been in this industry for a long, long time. I've never seen evidence of the hacking and some of the outrageous behaviour that took place in London.

Damien Carrick: Two points: so, you're saying that the tabloid culture, the media culture, in the UK is very different from Australia, and what might be a way forward in the UK might not necessarily be a way forward in Australia.

Peter Bartlett: Totally, totally different environment. Lord Justice Leveson is looking at a situation where the most outrageous behaviour has taken place. Finkelstein in Australia and the Convergence Review were looking at a situation and a system that actually works reasonably well, and were looking at ways to improve it.

Damien Carrick: Second point, there have been an enormous number of civil cases in the UK courts arising out of phone hacking, and are they along the lines that we're talking about here?

Peter Bartlett: Yes they are, and these were outrageous situations where people were hacking into phones, et cetera, and totally breaching people's rights to privacy, and now the courts are looking at all of those situations and the courts have not actually created a tort of privacy in the UK. And in fact the recent parliamentary committee in the UK recommended that they not have a statutory tort of privacy, but said that the area develops so radically over time—that our concepts of privacy change so much—that it's necessary to allow the courts to decide, over time, just what is private and what isn't private.

Michael Rivette: They'd still do that under statutory course of action. See, I've really waxed and waned with this whole issue of a statutory tort, because quite frankly, you know, with what we have now, as an experienced litigator, I can actually either stop or seek damages or equitable compensations for most breaches of what is fundamentally privacy. Of course it's couched in terms of either breach of confidence or under one of the consumer protection laws, or under trespass, or under the Surveillance Act. It may be couched under different terms, but I can clearly protect it now. What hasn't been decided is how the balance of freedom of expression actually arises.

Damien Carrick: Michael Rivette, you've been involved in a number of very important cases here in Australia, which have looked at these issues. One of them was Giller and Procopets, and I understand that involved a man who...dissolving marriage, a man who sent sexually explicit video footage of his wife to her friends and her family, and the court found that there was a breach of confidence, and he was liable for damages.

Michael Rivette: The critical thing with Gillar was that for the first time the courts said breach of confidence would respond to distress injuries. Previously it had to be a recognised psychiatric illness, so if the media take a photograph, let's say, of Nicole Kidman's child, Nicole Kidman doesn't have a nervous breakdown about that, she gets distressed. Now, previously breach of confidence wouldn't respond to that. After Gillar it does, so it really…that was the final piece in the jigsaw that made breach of confidence, at least in Australia, the cause of action that could respond to most privacy issues.

Damien Carrick: So we do have a breach of confidence action, but there haven't been any cases to date involving the media.

Michael Rivette: There are a lot of cases. I'm involved in a lot of cases where breach of confidence is actually used in situations, both in a situation where injunctions have been sought and been granted, and where ultimately the case is settled.

Damien Carrick: So why are these matters settling? Why aren't the media organisations taking them to court?

Michael Rivette: I don't know. Probably the ones that I've been involved it's been quite wise to settle it. I think there were cases that were lay down miseres that the media would've lost.

Damien Carrick: Peter Bartlett? Why are the media lawyers settling all of these cases?

Peter Bartlett: There are not a great number of privacy related breach of confidentiality actions issued, but those that are, like defamation actions, like commercial litigation, the lawyers on both sides, the parties on both sides would analyse the issues, the risks, the costs, all of the other factors that go into a decision as to whether a matter should be settled or not.

Reporter: Geoffrey Edelsten has one his court case to get back $5,000 he lent to a woman he met on a sugar daddy website.

Damien Carrick: I'd like to talk about a case recently, a week or so ago, in Melbourne, involving Geoffrey Edelsten. Now, we have to be careful here because there are suppression orders, but he won a high profile case against a US woman that he met online, but there was an injunction on any discussion of their dealings. Now, there does seem to be a paradox here because Geoffrey Edelsten and his wife Brynne Edelsten are currently involved in a reality TV show called *My Bedazzled Life*, and these are people who are clearly making a living out of bringing people into their private lives, but they also want to control that access. Peter Bartlett, what are your thoughts?

Peter Bartlett: Well, the media actually appeared in that case to try and oppose a suppression order, or injunction, and a limited form of order was made, and it was made on the basis that there was a confidentiality agreement between the parties. It was a contractual thing, and on that basis the judge took the view that certain materials should be suppressed.

Damien Carrick: So, on the basis that there is a contract, rather than the nature of the contract?

Peter Bartlett: Exactly, and you would find very often in commercial litigation, for example, that material is deemed to be confidential. It might be sensitive to some business or other, and so it's quite common in that context for orders to be made limiting publication.

Michael Rivette: Damien, your question, even if we take it out of the Edelsten context, which as Peter said was based on other considerations, your question does raise this issue: when a person trades off their personality and opens their lives for public scrutiny, do they lose the boundaries of privacy? And that's a debate that's occurring and has occurred all around the world. Do you lose that sphere of privacy that we have, albeit, you know, however limited it may be, do you lose that if you trade off it?

Peter Bartlett: Well, it's a question of where the boundary should be, and that's the difficulty in drafting any statutory law, because you look at Germany a couple of years ago, and Princess Caroline was photographed in the equivalent of the Champs-Elysees having a coffee with her children, and an injunction was granted. Now, that is going too far. If someone is in a major street sitting there having a coffee, then they're...someone is allowed to take their photograph, in my view.

Michael Rivette: Certainly the European courts have taken a stricter approach, but this is the real...where the real debate, if we talk about public interest, arises, and it's a classic...the classic case is the study of France. See, in France you have a sphere of privacy around you no matter where you are—public street, no matter where you are—but how that plays out is in a situation like this. Francois Mitterrand is having affairs. Well,

in France that might get you brownie points, but in Australia it wouldn't. He's one of the leaders of the country, the press knows, everyone knows, no one reports on it. That surely has to have an impact on his moral character, and in Australia wouldn't the public have a right to know this?

Second situation: Francois Mitterrand is suffering from cancer, but he's running for election. The media know, everyone knows, but no one reports it. Isn't that something that a voter should know, that here's this person, suffering from cancer, he's going to be making decisions that affect me, he may be going through chemotherapy or treatment, don't I have a right to know? In France, no. Now, I wouldn't want to live in a country where I don't know about those things that affect me, and that really crystallises to me this balancing act between the freedom of expression and the right of privacy. It's a very, very serious debate.

Damien Carrick: But isn't the point that maybe we have the balance better here than in places like France, where maybe they have legislation?

Michael Rivette: I think, quite frankly, that the media is sometimes taking an approach that might be cutting off your nose to spite your face, to be quite honest. And why I feel this, is because once things are defined with a clear right of privacy, which we know is already there in the law but expressed under breach of confidence, and…but it must be balanced against the freedom of expression, once we...that's enshrined, then it focuses people's attention on what the balance is.

Peter Bartlett: The problem is, it is set in stone, and the courts will look at the actual wording of the statutory provision and in 10, 20, 30 years' time, our views on privacy, our views on freedom of expression could well be significantly different, so we need the common law, we need the courts to have the power to make decisions on the changing circumstances from time to time, not on the basis that we've got with our federal constitution, which so many provisions now are totally and utterly out of date, but can't be changed.

Michael Rivette: But I...see, I disagree, I think the fact that it's enshrined in a piece of legislation certainly doesn't stop the courts; it addresses the courts to the questions that they have to...have to ask. A clear body of law would be developed fairly quickly on matters that came before the court, but what would be really important, to my mind, is it would focus people's attention on what their relative rights and obligations are, and you posed a question before, why is there not more litigation? And I'll tell you why, because there is ignorance in the legal profession, and the classic example was Lara Bingle.

Reporter: The picture snapped on a mobile phone while Bingle showered has reportedly done the rounds of AFL players. It's now featured in a *Woman's Day* article, but publishers insist they've done nothing wrong and no money was paid for it.

Michael Rivette: The photograph of Lara Bingle that was taken by a footballer was taken as she came out of the shower, there was clearly horror on her face, it was in a private setting that was in...in the context of a sexual relationship that she was having. Sexual relationship is a clearly defined head of confidential information, and to my mind is clearly something that should remain private between the individuals; it's a fundamental human right. I was astounded that people hit the airwaves and said, 'No right of privacy, therefore, she's got no cause of action', and it was wrong, because she did have a clear cause of action; Giller and Procopets had been decided, she could've brought an action under breach of confidence to actually seek damages and to stop the further dissemination of that, those photographs. What she then subsequently did, or was alleged to have done, or I read that she did, was trade off the story. Now then, once she did that, she probably lost the rights to seek damages, because that would've been factored into the mix, but there's great ignorance out there as to what the rights that currently exist, great ignorance, because it is a moving and developing feast. What a statutory cause does is it gets over that ignorance.

Damien Carrick: And Peter Bartlett, do you think that the privacy issues are slipping through the net, or do you think that we've got the balance right?

Peter Bartlett: I think we've got the balance right. I think that if we did have a statutory cause of action it would not be 95 per cent of Australians who would take advantage of it; it would be the celebrities, it'd be the rich and famous.

Damien Carrick: So, it would be Prince Harry with nude shots in Las Vegas or Princess Kate's topless shots in France?

Peter Bartlett: They used to say, 'What happens in Vegas stays in Vegas', now they say 'What happens in Vegas stays on Google.'

Reporter: Well, the Duke and Duchess of Cambridge are said to be saddened and disappointed at pictures published by a French gossip magazine showing the Duchess of Cambridge topless. The pictures are said...

Reporter: The French photos come just a few weeks after photos of a naked Prince Harry in Las Vegas were published in *The Sun* newspaper after they went viral on the internet.

Peter Bartlett: They are two totally different cases. We've got Prince Harry, reputedly with nothing on in a large gathering, at a party, where people were there and someone took, obviously, took photographs. So, you would not have too much sympathy for him in obtaining injunctions and obtaining damages for the publication of those photographs. Now, the Duchess of Cambridge is totally different situation, because the photographs were taken, they say, some one kilometre away, but where photographs are taken from a long distance away, it is a total breach of privacy, but not in the situation of Prince Harry, where he is in a large party.

Damien Carrick: So he had no expectation of privacy?

Peter Bartlett: Absolutely.

Michael Rivette: That's the critical point, isn't it? The issue is this though: it's a matter of degree. If I have a dinner party and I invite six people around to the dinner party, two people arrive and for the first time to their friends they declare, or one of them declares, 'I'm gay and this is my partner, but I haven't yet told anyone and I don't want anyone told.' So during the course of this dinner party photographs are taken—and someone posts them on their Facebook or social media—that from the context of that photograph it makes it obvious that that person is in a gay relationship with someone, so therefore publishes that information. Is that private, is that not private? My belief is it is, if it's in a context where it's small, but if it's in a larger context, that expectation of privacy actually wouldn't be there.

Peter Bartlett: But then you need to take into account, if the courts intervene and try and make an order against Facebook, how are they going to enforce it?

Michael Rivette: Yes, that's the...that's the...

Peter Bartlett: The US courts will not recognise any order made in those circumstances by an Australian court.

Michael Rivette: How you really stop it is for the individual who's about to post the photo to actually know that that's the wrong thing to do. That's where you stop it. If you have something that's clearly defined, that's spoken about, that's in

the press, that…it becomes part of the social conscience, and people realise, if they go, 'Whoops, should I post this or not, because there's that cause of action called privacy? I won't post it', then the law is actually working, but the moment people don't understand and appreciate the boundaries...

Damien Carrick: I'm sure it's happening in France and Germany and other places where the law is tight, so...so it is happening.

Peter Bartlett: People know what they should be doing and what they shouldn't be doing, and simply having some law sitting there is not going to make it any different. People know that if they do have a photograph of a sexual relationship with their ex-partner, it should not be posted.

Damien Carrick: Finally, a separate question from whether or not to introduce a right to privacy is whether or not we should overhaul the way our media is regulated, and there, of course, is currently debate taking place in both Australia and in the UK where they've got the Lord Leveson Inquiry into the phone hacking debacle, and we've got the Finkelstein inquiry here, which recommended a statutory regulation of the press for the first time. Briefly, from both of you, would you like to see a statutory regulation of the press? I'll start with you, Michael.

Michael Rivette: It's a really, really difficult question this, isn't it? I mean, it's the reason that there's so much heat in this debate is because it's a really...it involves really fundamental and delicate issues. I said before, society can't operate without a free press, and the concern is that once you have a government actually controlling the press through a body, albeit the Finkelstein report recommended it was only to be funded by, rather than to be controlled by, but the mere...

Damien Carrick: Set up under legislation?

Michael Rivette: Yes, set up under legislation, and it's very close to the line, isn't it? I don't know, to be quite honest. What I do know is a situation where a media organisation can actually choose to be a part or not a part at the drop of a hat is not a situation that should be allowed to continue. So if the media are serious about regulating their own conduct, then it would have to be a situation, like we saw with West Australian Newspapers—part of the Stokes organisation—said, 'No, sorry, we're not going to be part of it'…that situation is what actually gives rise or gives some credence to, 'well, we need some regulation'.

Damien Carrick: Peter Bartlett.

Peter Bartlett: Two issues: first of all, there are suggestions that the Gillard government is close to making an announcement in relation to a statutory breach of privacy. Well, I've heard it could be in the next couple of weeks. Now, I would find that very disappointing and very surprising, because we have Lord Justice Leveson is going to deliver a report late November, his report will, to a large degree, cover the privacy area, and it would be surprising and disappointing if our government was to announce reforms prior to looking at his analysis and deciding whether they agree or disagree with his analysis.

Damien Carrick: You're talking there just about the statutory right to privacy or this broader issue around regulation?

Peter Bartlett: On the privacy aspect, and the same actually goes for media regulation: it would be very disturbing if we have statutory intervention in media regulation.

Damien Carrick: Of the print media?

Peter Bartlett: Of the press. We saw during the Howard government a colossal amount of pressure put on the ABC, on the basis that the Howard government took the view that the ABC was left wing. We see under the present government a lot of pressure put on *The Australian*, because they are seen as being anti-Gillard government. If we had statutory intervention, if we had the right of the government of the day to potentially license journalists or regulate journalists in some way or regulate the media, then that would be a huge attack on freedom of speech.

Damien Carrick: Is that really what's been contemplated, though? I thought it was, you know, government funding of an organisation which would be set up under statute which would be guaranteed independence?

Peter Bartlett: Guaranteed independence? How can you guarantee independence if that regulatory body is totally funded by government? Who appoints the regulators? The government appoints them. Are we going to see, during a Labor government, people sympathetic to the Labor government appointed to that regulator? During a Liberal National Party government, more conservative people appointed to the regulator? That is not the type of regulation of the media that we want and need.

Damien Carrick: And you see that as a real...a real danger, with the Finkelstein proposals?

Peter Bartlett: It would be far too tempting for a government who is totally opposed to the views expressed by an organ of the media, to keep away from it.

Damien Carrick: Peter Bartlett, one of Australia's leading media lawyers. He provides round-the-clock advice to *The Age* newspaper, and before him, barrister Michael Rivette, who has a great deal of experience in media and privacy law. Now, earlier this year I spent three months in the UK at the Reuters Institute for the Study of Journalism at Oxford University exploring issues around privacy and regulation. My paper has just been published, and there's a link to it at the program website, at abc.net.au/radionational/lawreport. That's all we have time for today, thanks to producer James Pattison, and also to audio engineer this week Carey Dell. I'm Damien Carrick, talk to you next week with more law.

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Guests: Peter Bartlett, Partner at Minter Ellison, Melbourne
Michael Rivette: Barrister specialising in media law

Further Information

'Privacy Regulation and the Public Interest'
*The UK experience and the lessons it might hold for Australia*by Damien Carrick (July 2012), written as part of his 2012 Donald McDonald ABC Scholarship at the Reuters Institute for the Study of Journalism, University of Oxford

Convergence Review
Visit the official website for the review of policy and regulatory frameworks for media and communications in Australia

Finkelstein Inquiry
The website of the Australian Government's Independent Media Inquiry, led by former Justice of the Federal Court, Mr Ray Finkelstein QC

The Leveson Inquiry
Visit the official website for background information and the latest details of hearings and evidence

Credits
Presenter: Damien Carrick
Producer: James Pattison